**Speaking notes for CRC engagement with Accountability Now on 17 March, 2023**

1. **A timeline of the relevant common cause facts**
2. December 2007: the ANC resolved at its Polokwane conference that the Scorpions (DSO) be urgently closed down and that the investigative staff be transferred to SAPS.
3. May 2009: legislation implementing the resolution taken at the Polokwane conference of the ANC became law and the investigators within the Scorpions were replaced by the Hawks (DPCI) a “priority crimes” unit within SAPS.
4. March 2011: The legislation replacing the Scorpions with the Hawks was successfully impugned due to the Hawks lack of adequate independence, in the Constitutional Court case called Glenister II.
5. September 2012: remedial legislation purporting to address the binding criteria set in Glenister II was passed by parliament. The main criteria have become known as the STIRS requirements of the law: Specialised, Trained, Independent, Resourced and Secure in Tenure of Office. The remedial legislation set out to tweak the structure and operations of the Hawks just enough to render them constitutionally compliant.
6. November 2014: The remedial legislation so ordered by the majority judgment in Glenister II ( the joint judgment of Moseneke DCJ and Cameron J) was struck down in part in Glenister III but the location of the Hawks within SAPS was allowed to stand. The court itself adjusted the limping remedial legislation per the majority judgment penned by Chief Justice Mogoeng. He affirmed the need for an effective and efficient anti-corruption entity. The criteria set in Glenister II continue to be binding on government. The new legislation should have been implemented with these criteria in mind, but, due to, inter alia, State Capture, it was not.
7. February 2018: President Jacob Zuma resigns as President of South Africa and is succeeded by his Deputy, President Cyril Ramaphosa, president of the ANC, who was so elected at Nasrec in December 2017.
8. March 2019: by presidential proclamation the Investigating Directorate of the NPA was established to investigate, inter alia, corruption-related crimes unearthed by the State Capture Commission, and the commissions into the South African Revenue Service and Public Investment Corporation. Adv Hermione Cronje was appointed as its head but was soon succeeded by Adv Andrea Johnson. The ID is not, and does not purport to be, the type of anti-corruption entity contemplated by the majority judgment in Glenister II. The NPA is under the “final responsibility” of the Minister of Justice and its accounting officer is the DG of Justice. These features render it less than adequately independent.
9. Also in March 2019: the president was asked by the Chief Whip of the Inkatha Freedom Party during question time in Parliament to consider establishing what is widely regarded as the best practice means of implementing the binding STIRS criteria of the Glenister litigation rulings: a new chapter 9 institution to deal with the investigation and prosecution of corruption. The Honourable Narend Singh called it an “Integrity Commission”. The president’s immediate response was instructive: he found the idea interestingly “refreshing” and promised Parliament that he would “mull over” the notion.
10. In August 2020 the NEC of the ANC passed a resolution instructing cabinet to establish, as a matter of urgency, a stand-alone, permanent, independent, specialised entity to “deal with corruption and organised crime”.
11. The cabinet has not implemented this resolution, one which reflects the requirements of the law as laid down in Glenister II in broad terms.
12. February 2021: During his State of the Nation Address, the President indicated that: “We will shortly be appointing the members of the National Anti-Corruption Advisory Council, which is a multisectoral body that will oversee the initial implementation of the strategy and the establishment of an independent statutory anti-corruption body that reports to Parliament.”
13. August 2021: Accountability Now suggests the establishment of a best practice implementation of the rulings in the Glenister litigation and provides the executive and legislative branches of government with drafts of the suggested enabling legislation and constitutional amendment to establish a new Chapter Nine Institution with a mandate to prevent, combat, investigate and prosecute serious corruption (as defined).
14. June 2022: The CRC unanimously resolved to invite Accountability Now to make this presentation to it.
15. September 2022: The NACAC members were appointed by the President. Professor Firoz Cachalia chairs the NACAC. He views serious corruption as both endemic and systemic in SA. It is legally inevitable that NACAC will advise that government is bound by the rulings in Glenister II.
16. January 2023: A private members bill sponsored by the Shadow Minister of Justice Glynnis Breytenbach is published to promote the establishment of a more wide ranging anti-corruption entity than that envisaged by Accountability Now. A revision of the DA’s bill is under preparation.
17. February 2023: Cabinet envisages the upgrading of the ID within the NPA as its solution to serious corruption; all mention of a body reporting to parliament has gone. The remarks of the Minister of Justice Ronald Lamola at the Countering the Corrupt Conference on 6 February 2023 suggest that he believes the minority (non-binding) judgment in Glenister II, delivered by then Chief Justice Ngcobo, is the majority’s binding judgment when it comes to determining the characteristics of and criteria for an efficient and effective anti-corruption entity. As Adv. Paul Pretorius SC pointed out immediately after these remarks by Minister Lamola, his reliance on the minority judgment in Glenister II does not reflect the law as determined in the binding majority judgment in Glenister II. Accountability Now’s suggested drafts are intended to achieve a best practice form of compliance with the binding Glenister rulings. The drafts are supported by the Defend Our Democracy Campaign and by the Catholic Bishops’ Conference as well as Archbishop Thabo Makgoba, who is patron of Accountability Now and others in civil society.

***B Problem statement***

a) Serious forms of corruption like grand corruption, organised crime, state capture and kleptocracy in South Africa are criminal violations of fundamental constitutional and human rights. They are literally killing many South Africans, mostly the poorest.

(b) The anti-corruption machinery of state in SA is currently not fit for purpose especially regarding investigation and prosecution of serious corruption in all its forms. The NEC of the ANC has called for the urgent creation of a new entity that is permanent, specialised, independent and stands alone to deal with corruption. Cabinet has not reacted appropriately to this call.

(c) Our prosecutors and police, due to the ravages of attempted State Capture, lack the required capacity and resources to counter the corrupt efficiently and effectively as per C195(1)(b).

(d) The Constitutional Court, in the Glenister cases, has provided **binding** criteria for the establishment of functional corruption-busters who are fully able to carry out the international treaty obligations of SA. These criteria are not currently in place.

(e) That court has called upon parliament to make “the reasonable decision of a reasonable decision-maker in the circumstances” as regards the countering of corruption.

(e) The current circumstances in SA  dictate that a best practice reform is urgently required in order to bolster the country’s vulnerable culture of respect for human rights and boost confidence in its governance and economic prospects as well as achieve proper compliance with its international obligations per UN and AU treaties and the applicable SADC protocol.

(f) The ANC, DA and IFP all favour the notion that a new body needs to be established to deal with corruption. Between them they command the necessary majority to effect a constitutional amendment to give proper effect to the court rulings - “in the circumstances” now prevailing in SA as per C74(3).

(g) It is one of the powers of the National Assembly to maintain oversight of the exercise of national executive authority, including the implementation of legislation. It also has the power to initiate or prepare legislation under C 55(1)(b). The legislation currently in place is not achieving the intended implementation of the criteria laid down in the Glenister litigation. Hence State Capture and the failure to exact accountability from the corrupt.

(h) The remedial legislation in respect of the Hawks ought to have seen the implementation of the binding criteria set in Glenister II, it has failed to do so. It is accordingly within the power of the National Assembly to revisit the issues, which is what the reform initiatives of three of the four major parties in parliament seek to achieve. Accountability Now asks no more than that its suggestions be considered during the necessary processes. The matter should be accorded priority given the corrosive nature of serious corruption, the deleterious effects of the grey listing of SA, the S&P downgrading of SA last week and the urgency of righting the ship of state, recovering loot, attracting appropriate investment and countering the triple challenges of poverty, inequality and joblessness in SA via the proper enforcement of the decisions of our highest court.

**Accountability Now**

**17 March 2023.**